

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

14-CR-306 WHA

In the Matter of:

BK Case # 17-30501DM

BRUGNARA PROPERTIES VI,  
a California corporation  
("BPVI")

BK Appeal Judge W. Alsup

APPEAL OF BK COURT ORDER GRANTING  
WITHDRAWAL OF BPVI COUNSEL AUERBACH

Appellant/Movant Luke Brugnara ("Brugnara") appeals to this Federal District BK Appeal Court the BK Court's order allowing BPVI counsel, Ruth Auerbach, to withdraw as counsel from the on-going BPVI BK proceedings.

Auerbach was paid fifty thousand dollars (\$50,000.00 USD) at the inception of the BPVI proceedings in BK Court, as payment in full for services to be performed by Auerbach on the BPVI BK THROUGH COMPLETION OF THE BPVI BK. This is a large sum of money for a residential single family house BK.

Auerbach summarized her request for withdrawal as counsel based upon her presumption that her legal services were no longer needed by BPVI in these BPVI BK proceedings because the sole asset of BPVI, 224 Sea Cliff Avenue, San Francisco ("Sea Cliff") was "sold" in January 2020, and affirmed by the BK Court weeks later. BK Court Judge Montali agreed with her presumption(s) and GRANTED her withdrawal.

Brugnara, current President of BPVI, was just informed of the BK Court's granting Auerbach's request and timely files this appeal. Brugnara appeals the BK Court's order, and Auerbach's presumptions, because they are a FALSE STATEMENT (PRESUMPTIONS) OF FACT, AS SEA CLIFF HAS NOT SOLD, AND IN FACT WILL

(2)

LIKELY BE REMOVED FROM THE BPVI BK PROCEEDINGS IN BK COURT; accordingly, Averbach's legal responsibilities to represent BPVI in the BPVI BK is NOT completed, and REQUIRES her additional legal participation in the on-going BPVI BK motions/appeals/stays oppositions/interventions/adjournments, as debtor counsel of record for BPVI, whom has been paid in full \$50,000.00.

Specifically, the United States Attorney out of WASHINGTON DC, filed an Appeal and Emergency Stay of the BK Court Sale (of Sea Cliff) Order stating, in summation, that the BK court (and the trustee) lost authority and control over Sea Cliff on July 22, 2019, when BK Judge Montali ruled BPVI to be the "alter ego and nominee of Luke and Kay Brynars" holding only "bare naked title". Thus, Luke and Kay Brynars are the EQUITABLE TITLE OWNERS of Sea Cliff NOT BPVI per the UNITED STATES OF AMERICA (See: BAP # 20-1038, March 6, 2020, UNITED STATES REPLY TO EMERGENCY STAY AND APPEAL, Doc. #13, pages #1-11)

- "the BK court erroneously applied nominee and alter ego law, then reached an illogical and unsupported conclusion based upon the evidence and its own prior rulings", (page #2)
- "11 USC 541(c)(1) - Importantly where the debtor (BPVI) has only legal title and not equitable title/interest in the property, it becomes property of the estate ONLY to the extent of the debtor's legal title, but NOT to the extent of any equitable title/interest in the property 11 USC 541(d) (emphasis added)", (page #3)
- "Upon the BK Court ruling that BPVI holds "bare legal title" to Sea Cliff as the nominee and alter ego of the Brynars, the Code divested the BK Court of jurisdiction to sell any equitable interest in the property (Sea Cliff). EMPHASIS ADDED (page #4)
- "The Supreme Court has repeatedly cautioned that courts cannot deviate from the Code even when motivated by a sincere belief that creditors would be better off (citing SCOTUS CZYZEWSKI v JERIC, 137 US 973, 987 (2017))", (page #4)
- "There can be no satisfaction of the nominee lien through BK, as its very existence means the property to which it attaches is excluded from the estate", (page #4)
- "Inclusion of equitable title in the Sale Order (by Montali) was



- a manifest error in contradiction with the July 22, 2019 finding". (page #5)
- "The BK court correctly concluded that Equitable Title to Sea Cliff is held by the Brugnaras and the United States lien attaches to the legal title to Sea Cliff remaining with BPVI. Neither finding allows the trustee to liquidate (sell) property belonging to the BRUGNARAS, which the court incorrectly found "[EMPHASIS ADDED]. (page #5)
  - "The July 22, 2019 finding (alter ego/nominee) and issuance of Sale Order was illogical and without support in the record. The UNITED STATES will prevail in its (this) appeal!" [EMPHASIS ADDED]. (page #6)
  - "THIS APPEAL SIMPLY PRESENTS THE INCONVENIENT TRUTH THAT FACTUAL FINDINGS AND LEGAL CONCLUSIONS HAVE CONSEQUENCES THAT EXCLUDE PROPERTY FROM A BANKRUPTCY ESTATE. WHEN THAT HAPPENS, THE BK COURT'S JURISDICTION TO ACT ON SUCH PROPERTY EVAPORATES. IN PRESSING FORWARD WITH THE SEA CLIFF SALE, THE BK COURT REACHED A DECISION CONTRARY TO LAW AND ABUSED ITS DISCRETION. A STAY PENDING APPEAL IS WARRANTED." (page #8).

As detailed in the extremely well-written legal motions) and reply from the UNITED STATES (WASHINGTON D.C.), Sea Cliff is NOT a part of the BPVI BK proceedings as of July 22, 2019, as Equitable Title/Ownership is owned by the BRUGNARAS NOT BPVI. The BK court CANNOT order the sale of Sea Cliff as Sea Cliff's Equitable Title is NOT in BK. Accordingly, the 9th Circuit Court GRANTED the Stay because the UNITED STATES is likely to prevail/succeed on this appeal on its merits (NKEN v. HOLDER, 566 US 418, 426 (2009)). 1.

Moreover, any "agreements/decisions" made by the trustee (Hoskins) and the BK Court after July 22, 2019 regarding Sea Cliff are void/unenforceable. The "settlement agreement" in Sept. 2019 is void/invalid/unenforceable because the trustee and court have no jurisdiction or authority over the Equitable Title/Ownership of Sea Cliff; additionally, LUKE BRUGNARA DID NOT AGREE TO, NOR SIGN ANY "SETTLEMENT AGREEMENT", NOR ANY OTHER



Name: LUKE BALBARRA

Reg. No.: #12047-111

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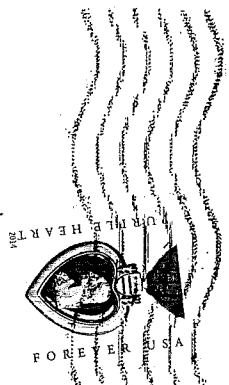
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UNITED STATES DISTRICT COURT

BK APPEAL JUDGE ALSUD

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